

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 1119 of 2014**

- D. R. Thakur S/o Late Shri Johan Thakur, :

--- Petitioner

Versus

- State Of Chhattisgarh through District Magistrate, Kabirdham, Distt. Kabirdham C.G., Chhattisgarh

--- Respondent

CAUSE TITLE TAKEN FROM CIS PERIPHERY

For Petitioner : Mr. C.B. Kesharwani, Adv.
For Respondent/State : Mr. Ashish Gupta, PL.

Hon'ble Shri Justice Deepak Kumar Tiwari
Order On Board**17.02.2023**

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") has been filed against the order dated 07.10.2014 passed by Additional Sessions Judge, Kabirdham passed in Criminal Revision No.30/2013 upholding the order, of Judicial Magistrate First Class, Kabirdham passed in Criminal Case No.509/2012 (State of Chattisgarh Vs. Shivsahay) passed on 04.09.2013, whereby learned Magistrate while acquitting the accused Shiv Sahay from offence under Section 411 IPC simultaneously took cognizance against the present petitioner, who was the prosecution witness No.2 in that case and directed to initiate criminal proceedings for the offence under Section 344 IPC for giving false evidence.

2. Facts of the case, in brief, is that the petitioner is a Government servant working as Executive Magistrate cum Tahsildar at Pandariya, District Kabirdham. While performing his duties, petitioner prepared identification memo on 23.08.2012 of the seized property i.e. iron rods in respect of Criminal Case No.509/2012, whereby the accused in that case namely Shiv Sahay was charged for the offence under Section 411 IPC for purchasing 75 KG stolen iron rods. The said iron rods were duly identified by complainant namely Ritesh Singh by the size of the iron rods which was mentioned in the



invoice of seized iron rods as 8 mm. However, the petitioner while deposing his statement in Criminal Case No.509/2012 as PW-2 stated in the chief-examination that the complainant has identified the said iron rods on the basis of the marks available on the rods. Thereafter, learned Magistrate while passing the judgment dated 04.09.2013, observed that the petitioner has deposed the statement contrary to the identification memo and stated that the complainant has not clearly identified such rods on the basis of any marks. So on the basis of such evidence, while passing the judgment of acquittal against the accused, learned Magistrate directed to initiate criminal proceedings against the present petitioner under Section 344 of IPC for giving false evidence. Thereafter, the petitioner challenged the same before the Revisional Court, which has been dismissed by the impugned order. Hence, this petition has been filed.

3. Learned counsel for the petitioner submits that the petitioner has prepared identification memo on 23.08.2012 and he was examined after more than six months i.e. on 28.02.2013 so there is every possibility that the petitioner might have forgotten the contents of identification memo and even if there was any discrepancy in the statement, then the Public Prosecutor should have refreshed the memory of the petitioner in view of Section 159 of Indian Evidence Act, 1872, but no suggestion was given at the time of examination. However, learned Magistrate, without considering that in the entire evidence, there is no *mens rea* of the petitioner in giving false evidence and that the petitioner is Executive Magistrate cum Tahsildar and while doing his official duties, such discrepancy occurred, passed the order of cognizance against the petitioner, which is not justifiable. Hence, he prays to quash the criminal proceedings initiated against the petitioner by learned Magistrate and to set aside impugned order.

4. On the other hand, learned State counsel would support the impugned



orders and oppose the submission made by counsel for the petitioner.

5. Heard learned counsel for the parties and perused the documents annexed with the petition carefully.

6. Chapter 36 of the Cr.P.C. provides provisions with regard to the offences effecting the administration of justice and to preserve its decorum and to maintain its dignity. The condition precedent for the exercise of power under Section 344 of Cr.P.C. requires that the at the time of delivering judgment or final order the witness appearing before it has knowingly or willfully given false evidence or has fabricated false evidence with the intention that such evidence should be used in such proceeding, and that the Court is satisfied that it is necessary and expedient and in the interest of justice to try him summarily for such offence. Therefore, *mens rea* is essential ingredient to examine real facts and whether the witness had knowingly or willfully given such evidence.

6. Applying the aforesaid parameters in the instant case, it can be said that the evidence was given by the petitioner as prosecution witness No.2 before the trial Court on 28.02.2013 to prove the identification memo Ex.P-3. The petitioner has categorically deposed that the complainant has identified the iron rods before him and further, in the cross-examination nothing was brought on record in this regard and even the witness was not declared hostile by the prosecution. Therefore, only because of some infirmity in the statement, it cannot be held that the witness knowingly or willfully had given the false evidence.

7. In view of the aforesaid analysis, thus Court is of the considered opinion that the criminal proceedings initiated against the petitioner would amount to abuse of process of law and the same deserves to be quashed.

8. In the result, impugned order dated 07.10.2014 is set aside and



observation and direction made against him in the order dated 04.07.2013 for taking cognizance against the petitioner under Section 344 Cr.P.C. is hereby quashed.

8. Accordingly, this petition is **allowed** to the extent indicated above. A copy of this order be sent to the concerned Court for necessary compliance.

Sd/-

(Deepak Kumar Tiwari)
Judge

Ajay

